

APPROVED

**BOARD OF DENTISTRY
MINUTES OF BOARD MEETING**

Friday, June 8, 2007

**Department of Health Professions
6603 W. Broad Street, 5th Floor
Richmond, Virginia 23230
Board Room 1**

CALL TO ORDER: A meeting of the Virginia Board of Dentistry was called to order at 9:10 a.m.

PRESIDING: Paul N. Zimmet, D.D.S., President

MEMBERS PRESENT: Meera A. Gokli, D.D.S.
Jeffrey Levin, D.D.S.
Jacqueline G. Pace, R.D.H.
Darryl J. Pirok, D.D.S.
Misty L. Sissom, R.D.H.
Edward P. Snyder, D.D.S.
Millard D. Stith, Jr.
James D. Watkins, D.D.S.
Glenn A. Young, D.D.S.

STAFF PRESENT: Sandra K. Reen, Executive Director for the Board
Sandra Whitley Ryals, Director for the Agency
Elaine Yeatts, Senior Policy Analyst
Alan Heaberlin, Deputy Executive Director for the Board
Catherine Chappell, Administrative Staff Assistant

COUNSEL PRESENT: Howard Casway, Senior Assistant Attorney General

QUORUM: All ten members of the Board were present.

PUBLIC COMMENT: None

APPROVAL OF MINUTES: Dr. Zimmet asked if the Board members had reviewed the minutes from the March 8, 2007 formal hearing. Mr. Stith moved to approve the minutes of the March 8, 2007 formal hearing as written. The motion was seconded and passed.

Ms. Sissom moved to approve the minutes of the March 9, 2007 board meeting. The motion was seconded and passed.

Dr. Snyder moved to approve the minutes of the March 23, 2007 formal hearing. The motion was seconded and passed.

Dr. Watkins moved to approve the minutes of the May 10, 2007 conference call. The motion was seconded and passed.

DHP Director's Report:

Ms. Ryals gave the following update:

- The Governor's Health Reform Commission is scheduled to meet on June 12, 2007, with the report due to the Governor in September.
- Target date for the Agency's move is August 17.

Ms. Ryals provided a power-point presentation on Key Performance Measures for the Department of Health Professions and described the Agency data available on the Virginia Performs website. She noted that scores were given for the three key performance measures: achieve 97% customer satisfaction; process 95% of applications within 30 days; and resolve 90% complaints within 250 days. She reported that DHP meets or is close to meeting the goals for customer satisfaction and application processing but that the challenge is to investigate and process complaints to meet the 250 day goal. The data shows that performance is dipping as very old cases are addressed which Ms. Ryals stated was a necessary step towards making real progress. She advised that performance action teams have developed and begun implementing action plans. She asked that the Board consider clarifying language relating to delegation to agency subordinates in 18VAC60-20-17 and addressing its process to improve capacity and efficiency. Dr. Zimmet agreed to address possible changes later on the agenda.

Presentation from VCU School of Dentistry:

Dr. Hunt provided an update on the VCU School of Dentistry and gave a power-point presentation on their new dental facility which will allow increased enrollment. Dr. Wiley reported on recent clinical testing experiences and working with the testing agencies on exam development. He indicated that the School will continue hosting SRTA and WREB exams.

Reports:

Examination Committee. Dr. Young advised that the Committee had met twice since the last Board meeting in order to develop the test items for the law examination that PSI will administer. Ms. Reen advised that the test was anticipated to be implemented later in the summer.

Regulatory-Legislative Committee. Dr. Snyder advised that the Committee met on June 7, 2007 and discussed:

- Development of a legislative proposal to distinguish two levels of dental assistants. The proposed language will be before the Board later on the agenda.
- The status of the NOIRA for including a requirement on informed consent in the recordkeeping requirements.
- Issuance of a NOIRA on periodic review of rules and regulations. Approval will be before the Board later on the agenda.
- Development of a chart to show delineation of duties among dental assistants and dental hygienists.

He noted that Dr. Watkins was unable to attend the meeting as he was representing the Board at the SRTA Board meeting.

Credentials Committee. Ms. Sissom advised that the Committee would be meeting after the Board meeting to discuss radiation safety program guidelines and feedback from Dr. Laurie Carter at VCU.

Board of Health Professions. Dr. Gokli reported on the recent Board of Health Professions (BHP) meeting. She advised that:

- Ms. Ryals provided a presentation addressing the Key Performance Measures for the entire Agency. Issues concerning backlogs and continuances were discussed.
- Legislative and fast track updates were provided.
- Criminal background checks continue to be contemplated.
- Possible regulation of emerging health professionals such as spa workers was discussed.

SRTA. Dr. Watkins advised that SRTA had held two board meetings recently, a telephone conference call on May 22, 2007 and a meeting on June 7, 2007, and he provided the following summary of the topics discussed:

- Dismissal of the previous director
- Recruitment efforts for a new director
- Possible expansion of the dental hygiene exam to non-

participating bordering states.

- Carrying a -0- balance on its financial statements and raising test fees as necessary to maintain such a balance.

Dr. Watkins noted that communications with SRTA is still a concern and that he was not informed of the time of the June 7, 2007 SRTA Board meeting until the day before. Dr. Zimmet referenced the recent correspondence from SRTA in the agenda package regarding communications.

AADE Mid-Winter Meeting. Dr. Zimmet and Ms. Sissom provided an overview of their sessions at the meeting. Ms. Sissom referenced her report in the agenda package, noting concerns were raised as to communication between the medical community and dentists regarding osteonecrosis cases. She recommended putting this information on the dentistry website to allow for open communication with the medical community.

LEGISLATION AND REGULATION:

Regulatory Actions Status Report. Ms. Yeatts presented a chart and a report on current regulatory actions noting that:

- the NOIRA on Informed Consent would be published on June 11, 2007, with a 30 day comment period. After that time, the Committee could draft language for consideration by the Board.
- the proposed regulations extending the time of general supervision from 7 months to 10 months would be published as Fast Track regulations on June 11, 2007. A public hearing is scheduled for August 3, with an effective date anticipated to be August 25, 2007.
- amendment to the Public Participation Guidelines is also being Fast Tracked, with an effective date of August 25, 2007
- proposed regulations on the requirements for administration of local anesthesia or nitrous oxide by hygienists are currently at the Secretary's office, awaiting approval. Once approval is obtained, a public comment period and hearing will be scheduled.

Proposed Legislation/2 Classes of Dental Assistants. Ms. Yeatts presented a draft of proposed legislation addressing the development of two classes of dental assistants. She noted that §54.1-2712 was amended to remove unnecessary language and that a new §54.1-2730 was introduced to describe two classes of dental assistants. Dr. Levin moved to accept the proposed legislation. The motion was seconded and carried. Ms. Yeatts

advised that the proposed changes would be subject to a public comment period and if there were no substantial objections, the language would be forwarded for administrative review for possible inclusion in the Governor's package.

Exempt Action. Ms. Yeatts presented an exempt regulatory action for adoption which eliminates regulation 18VAC60-20-71(5) on failure of a clinical examination. The change is required to conform to the legislation enacted to remove the language from the Code. She advised that a NOIRA was not necessary because the change was for consistency only. Dr. Pirok moved to accept the exempt regulatory action as drafted. The motion was seconded and carried.

Petition for Rule-Making. Ms. Yeatts referenced the Petition for Rule-making, included in the agenda package for information only. The petition asks that language in 18 VAC 60-20-220 be revised to clearly state that scaling is not delegable to dental assistants. She advised that the petition would be sent to the registrar, with a 20 day comment period to follow. Action would be necessary at the next Board meeting.

Guidance on Administering Oral Fluorides. Ms. Yeatts presented a guidance document on the administration of topical oral fluorides by dental hygienists in Department of Health programs for consideration by the Board. She advised that the guidance document is needed to clarify the use of a "standing protocol" issued by a doctor or dentist for health programs as permitted by new amendments to the Drug Control Act and §54.1-2722.D. Mr. Stith moved to accept the guidance document as drafted. The motion was seconded and carried.

Delegation. Ms. Yeatts presented proposed changes to Regulation 18VAC60-20-17 with respect to the criteria for delegation of informal fact-finding proceedings to an agency subordinate. Ms. Reen summarized the concept as introduced earlier by Ms. Ryals and advised that the proposed language would not actually change the options for disposition of cases but removes language that creates the appearance of barriers to assigning cases to be heard by subordinates. The Board requested that the language in 18VAC60-20-17. A. be revised to remove the words "upon determination" and replace such language with "at the time a determination is made" and add the

sentence "If delegation to a subordinate is not recommended at the time of the probable cause determination, delegation may be approved by the President of the board or his designee."

Dr. Watkins moved to adopted the proposed changes to 18VAC60-20-17, as amended for Fast Track submission. The motion was seconded and carried.

**BOARD
DISCUSSION/ACTION:**

Disciplinary Case Process. Ms. Reen requested Board guidance on streamlining the probable cause process. Dr. Levin suggested increasing the use of Board members to review cases. Ms. Reen reviewed options to be considered such as delegating some decisions to staff or to one member rather than three and changing the existing committee structure.

Mr. Heaberlin suggested that staff could handle advertising cases and Ms. Reen added that was also true for continuing education cases. Both types of cases would be addressed based on the guidance adopted by the Board.

Ms. Ryals noted that the Board currently had 46 cases over 1000 days old that could be closed. She noted that the enforcement intake staff was also looking into fast tracking cases involving business practice violations.

Ms. Reen recommended that the Board establish four committees of two members each for review of probable cause cases, to be conducted by each member individually. Dr. Watkins moved to accept this suggestion. The motion was seconded and carried.

Dr. Zimmet commented that this revision to the committee structure could change the Board calendar and raised the question of addressing quorum. Ms. Reen stated two members would be required and suggested that the president might appoint an alternate or designate a "floating" member. It was agreed that the new committee would be scheduled concurrent with another committee so that additional dates would not be required.

Ms. Ryals requested that the Board consider delegation of probable cause decisions in matters relating to continuing education, advertising and business practices. Ms. Reen was asked to develop a guidance document on insurance/billing practices for consideration at the next Board meeting to support

delegation of these cases. Dr. Young moved to delegate to Board staff probable cause decisions in matters relating to continuing education and advertising. The motion was seconded and carried.

Additionally, Ms. Ryals requested that the Board consider delegation to agency subordinates with respect to specialized cases. Dr. Watkins moved that the Board authorize utilization of agency subordinates to make probable cause determinations and to assist in investigations. The motion was seconded and carried.

Accepting residency completion without clinical examination.

Dr. Watkins asked that the Board consider accepting residency completion for licensure without requiring a clinical examination. He noted that other states are doing this. Dr. Zimmet requested that the Examination Committee review the request further and asked that Dr. Watkins serve as an ad hoc member of that committee.

Record Requirement for Name of Dentists/Dental Hygienist.

Dr. Watkins asked that more guidance be given in the regulations on the requirement for a dentist and/or dental hygienist's name to be in the record. Additionally, he requested that the length of time required for maintenance of the record be increased from 3 years. Dr. Zimmet asked the Regulatory/Legislative Committee to review the current language in 18VAC60-20-15.

SRTA Correspondence. Dr. Zimmet referenced the letter received from SRTA regarding the Board's communication concerns. Ms. Sissom expressed her concern about being associated with such an unprofessional organization. Dr. Watkins said that getting the new executive director should alleviate the communication problems. Ms. Reen noted that when the Board decided to join SRTA, it had agreed to revisit SRTA membership in one year so this could be discussed further at the September Board meeting.

WREB Examination. Correspondence from WREB was presented regarding the Board's concerns on testing of crown preparations. Dr. Zimmet suggested reviewing the testing criteria again in another year. Dr. Watkins moved to accept Dr. Zimmet's suggestion. The motion was seconded and carried.

Continuing Competency Survey. Ms. Reen presented a survey from the BHP on continuing competency concerns and activities. She noted that continuing education requirements are viewed as passive and reexamination and peer reviews are proactive. She asked if anyone knew of any activity in the dental community on this. Dr. Gokli noted that specialists are required to recertify every ten years, although some have been grandfathered. Dr. Watkins commented that SRTA is considering offering a continuing competency examination since WREB currently offers such an examination.

ADA 2006 House of Delegates Actions. Ms. Reen referred the Board to the letter included in the agenda package that was provided for informational purposes only.

ADA Issue Analysis and Trends. Dr. Zimmet noted this was provided as information of interest regarding the acceptance clinical of examinations by states.

Letter from Dr. Harris. Ms. Reen presented a letter from Dr. John Harris which expressed his concerns as to Board representation at SRTA. The Board agreed that the president of the Board would guide Ms. Reen in matters relating to representation at SRTA.

**BOARD COUNSEL
REPORT:**

Closed Meeting. Dr. Snyder moved that the Board enter into a closed meeting pursuant to §2.2-3711.A.7 of the Code of Virginia for consultation with legal counsel pertaining to actual or probable litigation. Additionally, it was moved that Board staff, Sandra Reen, Alan Heaberlin, and Catherine Chappell, and Board counsel, Howard Casway attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

Reconvene. Dr. Snyder moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

Dr. Zimmet noted that no action was taken during the closed meeting.

**CREDENTIALS
COMMITTEE
RECOMMENDATIONS:**

Closed Meeting. Dr. Snyder moved that the Board enter into a closed meeting pursuant to § 2.2-3705.5(2) of the Code of Virginia for the purpose of discussion of applications for licensure. Additionally, it was moved that Board staff, Sandra Reen, Alan Heaberlin, and Catherine Chappell, and Board Counsel, Howard Casway, attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

Reconvene. Dr. Snyder moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. The motion was seconded and passed.

Dr. Watkins moved to accept the Credentials Committee recommendations with respect to Case # 112935, # 112968, and #112750. The motion was seconded and carried.

Ms. Sissom asked for guidance in a situation in which an applicant for licensure had been employed and paid by a temporary agency owned by a licensee. Such applicant worked through the agency without a license. Ms. Sissom asked if a case could be brought against the owner of the agency. Ms. Reen noted that the Credentials Committee had discussed this and took no action. The Board agreed that a letter of concern should be addressed to the owner.

**EXECUTIVE
DIRECTOR'S REPORT:**

Provision of Patient Health Records. Ms. Reen requested guidance for staff on the Board's interpretation and application of the law on the provision of patient health records in accordance with §32.1-127.1:03.E. She indicated that recent decisions to close cases on this subject as no violation were creating a problem in that the staff was unable to explain to source's why the Board was not enforcing the statute when given undisputed evidence that the law was not followed. Mr. Casway advised that the law must be applied and that the Board should not close cases as no violation if a violation occurred. He stated that they should make a finding of a violation then decide what action to take. He said if the records or an appropriate response were not provided within 15 days of a written request then there was a

violation. The Board agreed to apply this guidance.

Continuing Education and Exemption Requests. Ms. Reen advised that several licensees had renewed on line but failed to indicate that they have met continuing education requirements and that they are familiar with the laws and regulations. Dr. Pirok suggested changing the computer process which allows licensees to renew without completing the continuing education question. Ms. Reen agreed to address this with the Data Division. She noted that in following up on the missing information, the opportunity to request an exemption was offered. Two resulting exemption requests led to questions as to the licensees' ability to safely practice. Ms. Reen asked if the Board wanted to offer an opportunity for exemption after the fact and asked what process should be followed when we are in receipt of information that the licensee is physically unable to practice. Following discussion the Board agreed that the opportunity for an exemption should be offered, that staff should inquire if the licensee is practicing and that the Credentials Committee should review requests for exemptions. Mr. Casway advised that so long as the licensee reports not currently practicing, the Credentials Committee should act on the request for an exemption consistent with 18 VAC 60-20-50.E.

Staff Update. Ms. Reen introduced Alan Heaberlin, Deputy Executive Director and stated that he is already showing success in addressing the backlog of cases. She noted that recruitment was underway for a part-time support position to work in the disciplinary area.

Travel. Ms. Reen advised that:

- Drs. Young and Watkins and Ms. Pace will be representing the Board at the SRTA meeting in August.
- Drs. Zimmet and Watkins will be representing the Board at the AADE meeting in September. A request for Mr. Casway to attend the attorney roundtable at that meeting has been submitted. Ms. Reen has been approved to attend the AADA meeting during that week as well.
- The WREB's meeting is planned for July 13-14, 2007 and that anyone who is interested in attending should let her know by next week.

Proposed 2008 Calendar. Ms. Reen presented the proposed

2008 calendar for the Board's review and approval. She noted that revisions might be needed in light of the addition of the fourth committee but requested action on the calendar so that room reservations might be processed. Dr. Levin moved to adopt the calendar as presented and revise as necessary to reflect the addition of the SCC - D. The motion was seconded and carried.

Renewal of a Mistakenly Issued License. Ms. Reen reported on and sought the Board's guidance on addressing a mistakenly issued license. Mr. Casway advised the Board to go into closed session.

Closed Session: Dr. Snyder moved that the Board convene in a closed meeting pursuant to Section 2.2-3711.A.7 of the Code of Virginia for consultation with legal counsel pertaining to actual or probable litigation. Additionally, it was moved that Sandra Reen, Alan Heaberlin, and Catherine Chappell, and Board counsel, Howard Casway attend the closed meeting because their presence in the closed meeting was deemed necessary and their presence would aid the Board in its deliberations.

Open Session: Dr. Snyder moved to certify that the Board heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened.

Dr. Watkins moved that renewal of the mistakenly issued license be denied and that the administrative process be followed to address any concerns. The motion was seconded and carried.

Delegation to Executive Committee. Ms. Reen asked the Board to consider delegating to the Executive Committee the responsibility for addressing any public comment received on the proposed legislation to create Dental Assistants I and II. Dr. Levin moved to delegate such responsibility to the Executive Committee. The motion was seconded and carried.

VDA Presentation. Ms. Reen advised that she and Dr. Watkins would be making a presentation at the Virginia Dental Association meeting on Friday, June 15, 2007. She welcomed any other Board members who were interested in attending.

Relocation/Formal Hearing. Ms. Reen noted that the Agency relocation was scheduled for August 17, 2007, which is also the date of the next formal hearing. Staff is working to find a location for the hearing which can not be held in the current or new office.

Insurance Company Consultants. Dr. Levin inquired if a retired dentist who consulted with an insurance company needed to have an active dental license. The Board agreed that such activity did not constitute the practice of dentistry. Mr. Casway commented that medical directors at insurance companies were required to maintain an active dental license.

ADJOURNMENT

With all business concluded, the Board meeting was adjourned at 4:50 p.m.

Paul N. Zimmet, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date